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increase the rate if warranted by such training.

(Authority: 38 U.S.C. 3680(a))

[43 FR 35295, Aug. 9, 1978, as amended at 44 FR 62497, Oct. 31, 1979; 46 FR 20673, Apr. 7, 1981; 48 FR 37982, Aug. 22, 1983; 54 FR 33888, Aug. 17, 1989]

EFFECTIVE DATE NOTE: At 57 FR 24367, June 9, 1992, §21.4138 paragraph (e) was revised and its authority citation was added, effective August 1, 1993. At 58 FR 26239, May 3, 1993, §21.4138 was further amended by delaying the effective date to August 1, 1999. For the convenience of the user the revised and added text is set forth as follows:

§21.4138 Certifications and release of payments.

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(e) *Other payments.* An individual must be pursuing a program of education in order to receive payments. To ensure that this is the case the provisions of this paragraph must be met.

(1) VA will pay educational assistance to an individual (other than one pursuing a program of apprenticeship or other on-job training or a correspondence course, one who qualifies for an advance payment or one who qualifies for a lump-sum payment) only after—

(i) The educational institution has certified his or her enrollment as provided in §21.4203; and

(ii) VA has received from the individual a verification of the individual's enrollment or verification of pursuit and continued enrollment, as appropriate. Generally, this verification will be required monthly, resulting in monthly payments.

(2) VA will pay educational assistance to an individual pursuing a program of apprenticeship or other on-job training only after—

(i) The training establishment has certified his or her enrollment in the training program as provided in §21.4203; and

(ii) VA has received from the individual and the training establishment a certification of hours worked.

(3) VA will pay educational assistance to an individual who is pursuing a correspondence course only after—

(i) The educational institution has certified his or her enrollment;

(ii) VA has received from the individual a certification as to the number of lessons completed and serviced by the educational institution; and

(iii) VA has received from the educational institution a certification or an endorsement on the individual's certificate, as to the number of lessons completed by the individ-

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ual and serviced by the educational institution.

(Authority: 38 U.S.C. 5113, 3680(b), 3680(g))

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§21.4145 Work-study allowance.

(a) *Eligibility.* (1) A veteran or reservist pursuing a program of education under either 38 U.S.C. chapter 30 or 32 or 10 U.S.C. chapter 1606 at a rate of three-quarter time or full time is eligible to receive a work-study allowance.

(2) An eligible person is eligible to receive a work-study allowance when—

(i) The eligible person is pursuing a program of education under 38 U.S.C. chapter 35 on at least a three-quarter-time basis;

(ii) The eligible person is pursuing a program of education in a State; and

(iii) The eligible person is not pursuing a program of special restorative training.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3485, 3537)

(b) *Selection criteria.* Whenever feasible, the Department of Veterans Affairs will give priority in selection for this allowance to veterans with service-connected disabilities rated at 30 percent or more. The Department of Veterans Affairs shall consider the following additional selection criteria:

(1) Need of the veteran, reservist, or eligible person to augment his or her educational assistance allowance;

(2) Availability to the veteran, reservist, or eligible person of transportation to the place where his or her services are to be performed;

(3) Motivation of the veteran, reservist, or eligible person; and

(4) Compatibility of the work assignment to the veteran's, reservist's, or eligible person's physical condition.

(c) *Utilization.* Work-study services may be utilized in connection with:

(1) Outreach services program as carried out under the supervision of a Department of Veterans Affairs employee;

(2) Preparation and processing of necessary papers and other documents at educational institutions or regional offices or facilities of the Department of Veterans Affairs;

(3) Hospital and domiciliary care and medical treatment at VA facilities;

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(4) For a reservist training under 10 U.S.C. chapter 1606, activities relating to the administration of 10 U.S.C. chapter 1606 at Department of Defense facilities, Coast Guard facilities, or National Guard facilities; and

(5) Any other appropriate activity of VA.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3485, 3537)

(d) *Rate of payment.* In return for the veteran's, reservist's, or eligible person's agreement to perform services for VA totaling not more than 25 hours times the number of weeks contained in an enrollment period, VA will pay an allowance in an amount equal to the higher of:

(1) The hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)) times the number of hours the veteran, reservist, or eligible person has agreed to work; or

(2) The hourly minimum wage under comparable law of the State in which the services are to be performed times the number of hours the veteran, reservist, or eligible person has agreed to work.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3485, 3537)

(e) *Payment in advance.* VA will pay in advance an amount equal to the lesser of the following:

(1) 40 percent of the total amount payable under the contract; or

(2) An amount equal to 50 times the applicable minimum hourly wage in effect on the date the contract is signed.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3485, 3537)

(f) *Veteran, reservist, or eligible person reduces rate of training.* In the event the veteran, reservist, or eligible person reduces his or her training to less than three-quarter-time before completing an agreement, the veteran, reservist, or eligible person, with the approval of the Director of the VA field station, or designee, may be permitted to complete the portions of an agreement in the same or immediately following term, quarter, or semester in which the veteran, reservist, or eligible person

ceases to be a three-quarter-time student.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3485, 3537)

(g) *Veteran, reservist, or eligible person terminates training.* (1) If the veteran, reservist, or eligible person terminates all training before completing an agreement, the Director of the Department of Veterans Affairs facility or designee:

(i) May permit him or her to complete the portion of the agreement represented by the money the Department of Veterans Affairs has advanced to the veteran, reservist, or eligible person for which he or she has performed no services, but

(ii) Will not permit him or her to complete that portion of an agreement for which no advance has been made.

(2) The veteran, reservist, or eligible person must complete the portion of an agreement in the same or immediately following term, quarter or semester in which the veteran, reservist, or eligible person terminates training.

(h) *Indebtedness for unperformed service.* (1) If the veteran, reservist, or eligible person has received an advance for hours of unperformed service, and the Department of Veterans Affairs has evidence that he or she does not intend to perform that service, the advance:

(i) Will be a debt due the United States, and

(ii) Will be subject to recovery the same as any other debt due the United States.

(2) The amount of indebtedness for each hour of unperformed service shall equal the hourly wage that formed the basis of the contract.

(Authority: 38 U.S.C. 3485)

(i) *Survey.* The Department of Veterans Affairs will conduct an annual survey of its regional offices to determine the number of veterans, reservists, or eligible persons whose services can be utilized effectively.

(ii) [Reserved]

(Authority: 38 U.S.C. 3485)

[38 FR 12214, May 10, 1973, as amended at 48 FR 37983, Aug. 22, 1983; 61 FR 26113, May 24, 1996]